

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-212352

DATE: December 23, 1983

MATTER OF: Richard W. DuMas

DIGEST:

Certain employees in Panama are entitled to tropical differential pay if they continuously occupy a position in Panama after discharge from military service. Under agency practice and interpretation of its regulations this requirement was satisfied despite a few days delay after military discharge before civilian employment. Evidently such delay was sometimes administratively unavoidable. However, tropical differential is denied a claimant who delayed his civilian appointment for 22 days to return to the United States for discharge and to transact personal business after military discharge.

Because Mr. Richard W. DuMas had a substantial break in service to transact personal business between his discharge from the armed services and his appointment to a civilian position in the former Panama Canal Zone we sustain our Claims Group's denial of his claim for tropical differential pay. (Claim Settlement April 19, 1981.)

On August 23, 1979, while still a member of the United States Army stationed in the Panama Canal Zone (now Republic of Panama), Mr. DuMas was selected to fill the position of Sports Specialist as an Army civilian employee in Panama. He requested that his entry on duty in the civilian position be delayed until the Army returned him to the United States for military discharge and until he transacted certain personal business there. After his discharge on September 6, 1979, at Fort Jackson, South Carolina, and after completion of his personal business, he returned to Panama at his own expense where he entered on duty in the civilian position effective September 29, 1979.

The regulation covering tropical differential for certain employees within the Panama Canal Employment System provided:

"To be eligible the employee * * * must have continuously occupied a position [substantially performed in Panama] * * * since (i) recruitment or transfer by a department from a place (other than the Canal Zone) under the jurisdiction of the United States, or (ii) separation from the Armed Forces of the United States * * *." (Emphasis added.)
35 C.F.R. § 253.135(b)(1) (1978 Edition).
(Similar language is now contained in
35 C.F.R. § 251.31(b)(1).)

The employing office denied tropical differential because Mr. DuMas in effect had a "break in service;" that is, he had not continuously occupied a position with an agency in the Panama Canal Zone since separation from the Armed Forces of the United States. A break of 22 days occurred between his discharge from the Army and entry on duty in the civilian position.

In a letter of July 9, 1980, the Executive Director, Panama Area Personnel Board, discussed alternative interpretations of the phrase "continuously occupied a position * * * since separation from the Armed Forces of the United States" in 35 C.F.R. § 253.135(b)(1). One interpretation, conforming to the most literal wording of the phrase, would require the employee to have occupied the civilian position from the first day after the military service ended. The Executive Director, however, observed that this approach would in effect nullify the rule because of the difficulty in processing the employee's transition from military to civilian position in 2 consecutive days. Therefore, as an alternative interpretation, he suggested the possibility of allowing tropical differential if within a reasonably short time following separation from the military, the former military member, without performing other employment, becomes a civilian employee for a Federal agency in Panama. In accordance with past agency practice and the evident intent of the drafters of the regulation, he stated that as a rule of thumb a reasonably short time would be 1 to 3 days.

There may be administrative necessity for some leeway when applying the terms of the regulation in question. Nonetheless any flexibility allowed should adhere fairly

B-212352

close to its most literal meaning. Thus, we recently restricted the term "recruitment" in clause (i) of this provision to mean a firm offer of a position rather than the mere possibility of being hired for employment in Panama. See Matter of Swenty, B-209770, May 25, 1983.

Further, an agency's interpretation of its own regulation is entitled to great weight and is generally followed in our decisions. See 47 Comp. Gen. 192 (1967), at page 204. We do not consider it appropriate to extend the break beyond the few days established by agency interpretation. Certainly, a substantial break in order to transact personal business, such as the 22 days in the case, does not equate with the short time required to administratively make the change to civilian employment.

We realize that personnel of the employing office gave Mr. DuMas permission to delay his entry on duty in Panama and at the same time assured him that he would be entitled to tropical differential upon his returning to Panama and appointment to the civilian position. However, the Government cannot be bound by erroneous advice given by its employees, or by actions of its agents which are contrary to governing law and regulation. See Matter of Peale, 60 Comp. Gen. 71 (1980), and cases cited in that decision.

for 
Comptroller General
of the United States